
SENATE BILL No. 470

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-3-40.5; IC 7.1-3; IC 7.1-5-10.

Synopsis: Alcoholic beverage issues. Requires a dealer permittee (other than a package liquor store) to display alcohol in a clearly designated area where the presence of a minor is prohibited without a parent or guardian who is at least 21 years of age. Requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who has an employee permit and alcohol server training (this is currently the case with package liquor stores). Makes it unlawful for: (1) a proprietor of a package liquor store, drug store, or grocery store to allow a person other than a sales clerk to ring up a sale; and (2) a person other than a sales clerk to ring up a sale in a package liquor store, drug store, or grocery store. Prohibits a dealer permittee from selling alcoholic beverages at less than cost.

Effective: July 1, 2007.

Wyss, Meeks

January 11, 2007, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 470

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-3-40.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: **Sec. 40.5. "Sales clerk" means a**
4 **person who:**

5 **(1) rings up; or**

6 **(2) otherwise records;**

7 **an alcoholic beverage sale in the course of the person's employment**
8 **in a dealer establishment.**

9 SECTION 2. IC 7.1-3-5-3 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The holder of a
11 beer dealer's permit shall be entitled to purchase beer for sale under the
12 permit only from a permittee entitled to sell to a beer dealer under this
13 title.

14 (b) A beer dealer shall be entitled to possess beer and sell it at retail
15 to a customer in permissible containers only.

16 (c) A beer dealer may not sell beer by the drink nor for consumption
17 on the licensed premises nor shall a beer dealer allow it to be consumed



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on the licensed premises.

(d) Except as provided in subsection ~~(e)~~, (f), a beer dealer shall be entitled to sell beer to a customer and to deliver it in permissible containers to the customer on the licensed premises, or to the customer's residence or office.

(e) This subsection does not apply to a package liquor store. Beer shall be displayed in a designated area separated from the area where nonalcoholic retail merchandise is displayed. A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be monitored by an employee who, as part of the employee's job responsibilities, shall ensure that a minor does not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age.

(f) A beer dealer shall not be entitled to sell and deliver beer on the street or at the curb outside the licensed premises, nor shall a beer dealer be entitled to sell beer at a place other than the licensed premises. A beer dealer shall not be entitled to sell beer and deliver beer for carry-out, or for delivery to a customer's residence or office, in a quantity that exceeds eight hundred sixty-four (864) ounces in a single transaction. However, notwithstanding IC 7.1-5-10-11, a beer dealer who is licensed pursuant to IC 7.1-3-10-4 shall be entitled to sell and deliver warm or cold beer for carry-out, or for delivery to a customer's residence, office, or a designated location in barrels or other commercial containers that do not exceed two thousand sixteen (2,016) ounces per container. This delivery may only be performed by the permit holder or an employee who holds an employee permit. The permit holder shall maintain a written record of each delivery for at least one (1) year that shows the customer's name, location of delivery, and quantity sold.

~~(e)~~ (g) Unless a beer dealer is a grocery store or drug store, a beer dealer may not sell or deliver alcoholic beverages or any other item through a window in the licensed premises to a patron who is outside the licensed premises. A beer dealer that is a grocery store or drug store may sell any item except alcoholic beverages through a window in the licensed premises to a patron who is outside the licensed premises.

SECTION 3. IC 7.1-3-10-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) The holder of a liquor dealer's permit shall be entitled to purchase liquor only from a permittee entitled to sell to a liquor dealer under this title.

(b) A liquor dealer shall be entitled to possess liquor and sell it at retail in its original package, to a customer only for consumption off the

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licensed premises.

(c) This subsection does not apply to a package liquor store. Liquor shall be displayed in a designated area separated from the area where nonalcoholic retail merchandise is displayed. A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be monitored by an employee who, as part of the employee's job responsibilities, shall ensure that a minor does not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age.

~~(c)~~ **(d)** A liquor dealer may deliver liquor only in permissible containers to a customer's residence or office in a quantity that does not exceed twelve (12) quarts at any one (1) time. However, a liquor dealer who is licensed under IC 7.1-3-10-4 may deliver liquor in permissible containers to a customer's residence, office, or designated location. This delivery may only be performed by the permit holder or an employee who holds an employee permit. The permit holder shall maintain a written record of each delivery for at least one (1) year that shows the customer's name, location of delivery, and quantity sold.

~~(d)~~ **(e)** A liquor dealer may not sell or deliver alcoholic beverages or any other item through a window in the licensed premises to a patron who is outside the licensed premises. However, a liquor dealer that is a drug store may sell prescription drugs and health and beauty aids through a window in the licensed premises to a patron who is outside the licensed premises.

SECTION 4. IC 7.1-3-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The holder of a wine dealer's permit shall be entitled to purchase wine only from a permittee who is authorized to sell to a wine dealer under this title. A wine dealer shall be entitled to sell wine for consumption off the licensed premises only and not by the drink.

(b) This subsection does not apply to a package liquor store. Wine shall be displayed in a designated area separated from the area where nonalcoholic retail merchandise is displayed. A minor may not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age. The designated area shall be monitored by an employee who, as part of the employee's job responsibilities, shall ensure that a minor does not enter the designated area without a parent or guardian who is at least twenty-one (21) years of age.

~~(b)~~ **(c)** A wine dealer shall be entitled to sell wine in permissible containers in a quantity of not more than three (3) standard cases, as

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determined under the rules of the commission, in a single transaction. However, a wine dealer who is licensed under IC 7.1-3-10-4 may possess wine and sell it at retail in its original package to a customer only for consumption off the licensed premises.

~~(c)~~ (d) Unless a wine dealer is a grocery store or drug store, a wine dealer may not sell or deliver alcoholic beverages or any other item through a window in the licensed premises to a patron who is outside the licensed premises. A wine dealer that is a grocery store or drug store may sell any item except alcoholic beverages through a window in the licensed premises to a person who is outside the licensed premises.

~~(d)~~ (e) However, a wine dealer who is licensed under IC 7.1-3-10-4 may deliver wine only in permissible containers to a customer's residence, office, or designated location. This delivery may only be performed by the permit holder or an employee who holds an employee permit. The permit holder shall maintain a written record of each delivery for at least one (1) year that shows the customer's name, location of delivery, and quantity sold.

SECTION 5. IC 7.1-3-18-9, AS AMENDED BY P.L.165-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as provided in subsection (j)**, the commission may issue an employee's permit to a person who desires to act as:

- (1) a **sales clerk in a package liquor store; dealer establishment;**
- (2) an employee who serves wine at a farm winery; or
- (3) a bartender, waiter, waitress, or manager in a retail establishment. ~~excepting dining car and boat employees.~~

(b) A permit authorized by this section is conditioned upon the compliance by the holder with reasonable rules relating to the permit which the commission may prescribe from time to time.

(c) A permit issued under this section entitles its holder to work for any lawful employer. However, a person may work without an employee's permit for thirty (30) days from the date shown on a receipt for a cashier's check or money order payable to the commission for that person's employee's permit application.

(d) A person who, for a package liquor store or retail establishment, is:

- (1) the sole proprietor;
- (2) a partner, a general partner, or a limited partner in a partnership or limited partnership that owns the business establishment;
- (3) a member of a limited liability company that owns the

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business establishment; or

(4) a stockholder in a corporation that owns the business establishment;

is not required to obtain an employee's permit in order to perform any of the acts listed in subsection (a).

(e) An applicant may declare on the application form that the applicant will use the employee's permit only to perform volunteer service that benefits a nonprofit organization. It is unlawful for an applicant who makes a declaration under this subsection to use an employee's permit for any purpose other than to perform volunteer service that benefits a nonprofit organization.

(f) The commission may not issue an employee's permit to an applicant while the applicant is serving a sentence for a conviction for operating while intoxicated, including any term of probation or parole.

(g) The commission may not issue an employee's permit to an applicant who has two (2) unrelated convictions for operating while intoxicated if:

(1) the first conviction occurred less than ten (10) years before the date of the applicant's application for the permit; and

(2) the applicant completed the sentence for the second conviction, including any term of probation or parole, less than two (2) years before the date of the applicant's application for the permit.

(h) If an applicant for an employee's permit has at least three (3) unrelated convictions for operating while intoxicated in the ten (10) years immediately preceding the date of the applicant's application for the permit, the commission may not grant the issuance of the permit. If, in the ten (10) years immediately preceding the date of the applicant's application the applicant has:

(1) one (1) conviction for operating while intoxicated, and the applicant is not subject to subsection (f); or

(2) two (2) unrelated convictions for operating while intoxicated, and the applicant is not subject to subsection (f) or (g);

the commission may grant or deny the issuance of a permit.

(i) The commission shall revoke a permit issued to an employee under this section if:

(1) the employee is convicted of a Class B misdemeanor for violating IC 7.1-5-10-15(a); or

(2) the employee is convicted of operating while intoxicated after the issuance of the permit.

The commission may revoke a permit issued to an employee under this section for any violation of this title or the rules adopted by the

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commission.

(j) This section does not apply to a dining car or to airline employees.

SECTION 6. IC 7.1-5-10-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 23. (a) It is unlawful for a person who is the proprietor of a package liquor store, drug store, or grocery store to allow a purchaser of alcoholic beverages, or any other person who is not a sales clerk, to ring up or otherwise record an alcoholic beverage sale.

(b) It is unlawful for a purchaser of alcoholic beverages, or any other person who is not a sales clerk, to ring up or otherwise record an alcoholic beverage sale in a:

(1) drug store;

(2) grocery store; or

(3) package liquor store.

SECTION 7. IC 7.1-5-10-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. (a) For purposes of this section, cost to the dealer permittee shall be calculated as follows:

STEP ONE: Determine:

(A) the invoice cost of the alcoholic beverages to the dealer permittee within thirty (30) days before the date of sale; or

(B) the replacement cost of the alcoholic beverages to the dealer permittee;

STEP TWO: Subtract the amount of all discounts except customary discounts for cash from the amount determined under STEP ONE.

STEP THREE: Add to the amount determined under STEP TWO the cost of doing business by the dealer permittee as evidenced by the standards and methods of accounting regularly employed by the dealer permittee in allocating overhead costs and expenses paid or incurred, which must include the following:

(A) Labor (including salaries of executives and officers).

(B) Rent.

(C) Depreciation.

(D) Selling costs.

(E) Maintenance of equipment.

(F) Delivery costs.

(G) Licenses, taxes, insurance, and advertising.

(b) In the absence of proof of a lesser or higher cost of doing

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business by the dealer making the sale, the cost of doing business by the dealer shall be presumed to be eight percent (8%) of the cost of the alcoholic beverages to the dealer as determined in subsection (a).

(c) It is a Class A infraction for a dealer permittee to offer to sell or sell alcoholic beverages at less than the cost to the dealer permittee as determined under subsection (a).

(d) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of this section shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.

(e) The department, or any person injured by a violation of subsection (c), may file an action in court to prevent, restrain, or enjoin a violation or threatened violation. If a violation or threatened violation is established, the court shall:

(1) enjoin and restrain or otherwise prohibit the violation or threatened violation; and

(2) assess in favor of the plaintiff and against the defendant the costs of suit, including reasonable attorney's fees.

In addition to injunctive relief and attorney's fees, the plaintiff may also recover actual damages. In the event that no injunctive relief is sought or required, any person injured by a violation of subsection (c) may maintain an action for damages, attorney's fees, and court costs.

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